

NO:730/14/L/RD/L&C/70
Government of India,
Ministry of Defence,
Dte Gen Defence Estates,
West Block-4, R.K. Puram
New Delhi-110 066.

Dated: February 1990.

To

The Director,
Defence Estates,
Ministry of Defence,
Central / Eastern / Northern / Southern / Western Command
Lucknow Calcutta Jammu Pune Panchkula

SUB: MUTATION OF BUNGALOW HELD ON OLD GRANT TERMS.

A reference has been received from the Director of a Command seeking clarification as to whether there is a need for seeking "No Objection" from the local Military authorities when a request is received by the DEO for grant of permission for sale/mutation of sites of bungalows held on old grant terms to enable him and the DEOs to forward such proposals/requests to this Dte. General for issuance of sanction of the competent authority.

2. In this context it may be noted that GGO 179 of 1836 and similar other old grant terms contain the following two conditions :-

"3rd- If the ground has been built upon, the buildings are not to be disposed of to any person, of whatever description, who does not belong to the army, until the consent of the officer Commanding the station shall have been previously obtained under his hand.

4th- When it is proposed, with the consent of the General Officer, to transfer possession to a native, should the value of the house, buildings or property to be so transferred exceed Rs. 5,000, the sale must not be effected, until the sanction of Govt. shall have been obtained through His Excellency the Commander-in-Chief."

3. In view of the above it cannot be held that the views of the Station Commander are not relevant in the case of authorising/recognising transfers of buildings. All the same, there are other laws and constitutional


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rights that have come into force and have become applicable even in modification of the old grant terms after those terms were laid down in 1836, and other relevant years for areas outside the jurisdiction of the Bengal Army. Under Section 10 of the Transfer of Property Act, 1882 "where property is transferred subject to any condition or limitation absolutely restraining the transferee or any person claiming under him from parting with or disposing of his interest in the property, the condition or limitation is void, except in the case of a lease the condition for the benefit of the lessor or those claiming under him." These are applicable to the holders of the old grant sites, and hence, in the normal course, there should be no objection in transferring the rights of the holders of old grant sites unless such transfer is prejudicial to the interest of the Government.

4. It cannot also be held that the Government of India's permission envisaged under the 4th condition regarding the transfer of property shall be subject to a veto by the Officer Commanding the Station. What is required is not a No Objection in the sense of a veto for the Station Commander, but the view of the Station Commander as to the effect of such sale / proposed transfer on the military interests, to enable the Government to take a decision on the proposed sale/transfer of the property. While taking a decision the Govt. will give due respect to the views of the Station Commander. If the transfer is within the delegated power of the Director General Defence Estates for exercising the power of the Govt. the Director General will also do likewise.

5. Hence, what is expected is ascertaining the views of the Officer Commanding the Station on the proposed sale/transfer and not a no objection certificate. This may please be noted.

6. This also disposes of Dte. Defence Estates, Central Command letter No. 16248/LC3 dated 29.12.1988.



Director General
Defence Estates

Copy to:-

All DEOs.

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Copy of Government of India, Defence Department letter No. 2706-LC.D.4, dated the 14th September 1940 to the General Officers Commanding-in-Chief, Northern/Eastern and Southern Commands and the Commander Western (Independent) Distt.

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TRANSFER OF PROPERTIES FROM ONE PARTY TO ANOTHER IN
BAZAR AREAS OTHER THAN BAZARS NOTIFIED UNDER SECTION
43A OF THE CANTONMENT ACT. 1924.

With reference to Defence Department letter No. 2698/LC/ dated the 20th July 1939 I am directed to say that the Govt. of India authorise Cantonment Boards to sanction the transfer of sites from one party to another which are situated in areas which have been declared by notification under rule 2(b) of the Cantonment Land Administration Rules 1937 to be "Bazars" where Government sanction is necessary and have no objection to Officer Commanding the station giving such authority where their sanction is necessary subject to the following conditions:-

- 1) A report shall be made by the Board through the General Officer Commanding-in-Chief, the Command to the Government of India in every case where Government's claim to proprietary rights in the land is disputed.
- 2) The Board shall sanction a transfer only if the transfer does not purport to transfer full ownership in the land.
- 3) The Board shall not sanction a transfer which involve the sub-division of a site without first referring the case for the orders of the Officer Commanding-in-Chief, the Command.
- 4) Where the conditions on which the land is held provide that a transferee shall sign an acknowledgment shall be obtained before the sanction is given.

2. The condition at (4) above should also be followed in the case of land in bazar notified under section 43A of the Cantt Act 1924.

* as to the conditions on which the land is held such acknowledgment.

Copy of Government of India, Defence Department letter No. 8589/D.4, dated the 6th August 1941 to the G.O.C.-in-Chief, Southern Command. 20/3

**TRANSFER BY INHERITANCES OF PROPERTIES ON OLD GRANT SITES
IN CANTONMENTS.**

With reference to your letter No. 356/V/M.C., dated the 15th February 1941 I am directed to invite your attention to the ruling contained in Defence Department letter No. 4298/D.4, dated the 23rd April 1941 to the General Officer commanding-in-Chief, Northern Command, copy endorsed to you, to the effect that a person succeeding to a property by 'inheritance' is not a 'transferee' of the grant for the purposes of G.O. No. 179 of 1836.

2. The principle embodied in the above ruling will also apply to all other old orders or regulations the term of which require the government's or a lower authority's sanction to be obtained to the transfer of a property by one party to another.

See also P-1 255 of M.L.M.

letter No 730/14/RED/SC/170. dt 23.12.1970
enc. 63A.

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